# STATE OF MICHIGAN

# COURT OF APPEALS

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MATTHEW CHAPMAN,

Plaintiff-Appellee/Cross Appellant,

v

PHIL'S COUNTY LINE SERVICE, INC., PHILIP LODHOLTZ, and COUNTY LINE TOWING,

Defendants-Not Participating,

and

OSCEOLA COUNTY and MARK WARREN COOL,

Defendants-Appellants/Cross Appellees,

and

DEPARTMENT OF TRANSPORTATION,

Defendant.

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UNPUBLISHED
April 19, 2007

No. 269150
Osceola Circuit Court
LC No. 03-009803-NI

Before: Zahra, P.J., and Cavanagh and Schuette, JJ.

PER CURIAM.

Defendants, Osceola County and Mark Warren Cool, appeal as of right the denial of their motion for summary disposition premised on a claim of governmental immunity under MCL 600.2966 because plaintiff was a volunteer police officer. We reverse. Plaintiff cross-appeals the denial of his motion to enforce a purported settlement agreement with Osceola County and Cool. We affirm.

Plaintiff, a volunteer police officer for defendant Osceola County, was injured in a motor vehicle accident while a front-seat passenger in a police car being driven by defendant Cool, an Osceola County Sheriff's Deputy. He and Cool were responding to a breaking and entering call, when the police car hydroplaned, Cool lost control of the car, and the car struck an oncoming vehicle.

In relevant part, plaintiff sued Osceola County and Deputy Cool, alleging that Cool negligently operated the County's vehicle.[1] Plaintiff pursued his claim under the motor vehicle exception to governmental immunity, MCL 691.1405. During the pendency of the proceedings, correspondence was exchanged between the parties' attorneys involving settlement negotiations. Subsequently, defendants moved for summary disposition arguing that plaintiff's claim was barred by the firefighter's rule, MCL 600.2966. Thereafter, plaintiff moved to enforce their purported settlement agreement. Relying on the principles espoused in *Roberts v Vaughn*, 459 Mich 282; 587 NW2d 249 (1998), the trial court held that the firefighter's rule, as subsequently codified in MCL 600.2966, did not extend to volunteers and denied defendants' motion. The trial court also denied plaintiff's motion, holding that no enforceable settlement agreement existed between the parties. This appeal followed.

First, defendants claim that they were entitled to summary dismissal because MCL 600.2966 unambiguously provides governmental immunity from tort liability for injuries to police officers and plaintiff was a police officer; that he was a volunteer is irrelevant. After review de novo of the trial court's decision involving this issue of statutory interpretation, we agree with defendants. See *Sotelo v Grant Twp*, 470 Mich 95, 100-101; 680 NW2d 381 (2004).

MCL 600.2966 provides:

> The state, a political subdivision of this state, or a governmental agency, governmental officer or employee, volunteer acting on behalf of a government, and member of a governmentally created board, council, commission, or task force are immune from tort liability for an injury to a firefighter or police officer that arises from the normal, inherent, and foreseeable risks of the firefighter's or police officer's profession.

According to the plain language, then, if plaintiff is a "police officer" and if his injury arose from the normal, inherent, and foreseeable risks of that profession, defendants are immune from tort liability for the injury. The disputed issue, however, is whether plaintiff is a "police officer" within the contemplation of the statute. Plaintiff claims that he was merely an unpaid volunteer—"a civilian ride-along"—and, thus, should not be considered a "police officer" under MCL 600.2966. Defendant claims that plaintiff was a member of the police force and, thus, was a police officer regardless whether he was paid. The trial court agreed with plaintiff, we agree with defendant.

The purpose of judicial interpretation of statutes is to ascertain and give effect to the intent of the Legislature. *Neal v Wilkes*, 470 Mich 661, 665; 685 NW2d 648 (2004). If the plain and ordinary meaning of the language is clear, it must be enforced as written. *Nastal v Henderson & Assoc Investigations, Inc*, 471 Mich 712, 720; 691 NW2d 1 (2005). Statutory language should be construed reasonably, keeping in mind the purpose of the act. *People v Spann*, 250 Mich App 527, 530; 655 NW2d 251 (2002). Courts may consult dictionary definitions to determine the ordinary meaning of undefined statutory terms. *Koontz v Ameritech Services, Inc*, 466 Mich 304, 312; 645 NW2d 34 (2002).

[1] Other parties were sued as well but they are not involved in this appeal.

The term "police officer," is not defined in the Revised Judicature Act (RJA) of 1961 and we are unable to locate case law interpreting the term. Turning to a dictionary for guidance, "police officer" is defined as a policeman or policewoman, which are then defined as members of a police force. *Random House Webster's College Dictionary* (1997). And, a "member" is a person belonging to or forming part of an organization or group. *Id*. But, does one have to be an employee or be paid to be considered a "member" of a police force as plaintiff suggests? We do not think so.

Because MCL 600.2965 through 600.2967 are derived from the common-law firefighter's rule,[2] we turn to that body of law for analytical guidance because the language of a statute should be read in light of previously established rules of common law. See *Nummer v Dep't of Treasury*, 448 Mich 534, 544; 533 NW2d 250 (1995). Before MCL 600.2966 was enacted, firefighters and police officers were barred from recovering damages "from a private party for negligence in the creation of the reason for the safety officer's presence." *Kreski v Modern Wholesale Electric Supply Co*, 429 Mich 347, 358; 415 NW2d 178 (1987). In *Kreski*, the widow of a firefighter sued the owner and occupier of a building for negligence after her husband died while trying to extinguish a fire in that building. *Id*. at 351-352. In adopting this "firefighter's rule," the *Kreski* Court relied on public policy rationales stemming from "the nature of the service provided by fire fighters and police officers, as well as the relationship between these safety officers and the public they are employed to protect." *Id*. at 365.

Then, in *Roberts*, *supra* at 282, our Supreme Court held that the firefighter's rule did not bar a volunteer firefighter from suing the third parties responsible for or involved in the emergency. The *Roberts* Court characterized the firefighter's rule as a general waiver of the duty of care that third parties owe firefighters and police officers, except when the firefighter or police officer is a volunteer. *Id*. at 285, 289-290; see, also, *Tull v WTF, Inc*, 268 Mich App 24, 27; 706 NW2d 439 (2005).

But, the factual situations discussed above are wholly distinguishable from the case at bar. This case does not involve a lawsuit against the third party responsible for or involved in creating the emergency; rather, here, plaintiff is suing his "partner officer" and the governmental entity that owned the police vehicle and on whose behalf both plaintiff and his partner officer provided services. Therefore, those cases interpreting the common-law firefighter's rule are of limited use with regard to our analysis. Instead, we must rely on the well-known rules of statutory construction to ascertain the Legislature's intent.

First, we consider the statutory language. See *Roberts v Mecosta Co Gen Hosp*, 466 Mich 57, 63; 642 NW2d 663 (2002). The fair and natural import of the terms used, in view of the subject matter of the law, governs. *In re Wirsing*, 456 Mich 467, 474; 573 NW2d 51 (1998) (citation omitted). The critical term of MCL 600.2966 for our purposes is "police officer." As noted above, a police officer is a member of a police force. Plaintiff claims he was not a member of a police force; rather, the police just let him "ride-along" on calls. But, the record reveals that plaintiff signed an "oath of office," swearing to "faithfully discharge the duties of the office of reserve deputy sheriff." The oath was signed by the Sheriff and it was notarized. The record

[2] See House Legislative Analysis, HB 4044 (November 23, 1998).

also reveals that, while "riding along," plaintiff (1) was dressed in a deputy's uniform, (2) wore a bullet-proof vest, (3) carried a gun, a baton, and mace, (4) had a badge issued by the Sheriff's department, and (5) had police powers that could be exercised when he was with a certified officer.

In light of these facts, we cannot conclude that plaintiff was merely a "civilian ride-along." Plaintiff was a "police officer" as that term is reasonably construed and commonly understood. He was "a member of a police force." The statute does not require that he be an equal member of the police force or an employed member of the police force or a paid member of the police force. Simply put, plaintiff looked like a police officer, he had similar duties, responsibilities, and powers as a police officer, and he was exposed to the same risks as a police officer. And, like other members of a police force, he was entitled to and received benefits under the worker's disability compensation act of 1969. See MCL 418.161; see, also, *Spencer v Clark Twp*, 142 Mich App 63, 67; 368 NW2d 897 (1985).

Second, our construction is reasonable in view of the subject matter of MCL 600.2966—governmental immunity. Governmental immunity is to be broadly construed. *Jackson Co Drain Comm'r v Stockbridge*, 270 Mich App 273, 284; 717 NW2d 391 (2006). The primary purpose of governmental immunity is to avoid the expenditure of governmental funds in litigation. *Costa v Community Emergency Med Services, Inc*, 475 Mich 403, 410; 716 NW2d 236 (2006). Toward that end, both MCL 600.2966 and MCL 691.1407(2) have provided grants of immunity to possibly every conceivable governmental unit, agency, and individual so associated, including officers, employees, and even volunteers "acting on behalf of a government." Plaintiff would certainly be the beneficiary of that immunity if, for example, his partner officer or a third party attempted to sue him in tort for his negligent conduct during a police emergency run. Similarly, his partner officer and the agency for whom plaintiff was providing law enforcement services expected and should enjoy the same benefit. An absurd consequence would result if we were to hold otherwise. And, permitting such tort actions would significantly threaten the viability of reserve deputy programs; neither a regularly employed police officer nor a law enforcement agency would likely choose to accept the risk associated with working with or utilizing these reserve deputies.

In sum, plaintiff was a police officer, i.e., a member of a police force, within the contemplation of MCL 600.2966, when he was injured. And, plaintiff's injuries arose from "the normal, inherent, and foreseeable risks of" that profession. Plaintiff was in a police vehicle that was responding to a breaking and entering call when the accident occurred. Traffic accidents are a normal, inherent, and foreseeable risk stemming directly from fulfilling the police duties of an officer, which include responding to emergency calls. See *Woods v City of Warren*, 439 Mich 186, 193; 482 NW2d 696 (1992); *Stehlik v Johnson (On Rehearing)*, 206 Mich App 83, 87-88; 520 NW2d 633 (1994). Therefore, defendants are immune from liability under MCL 600.2966.[3] Accordingly, we reverse the trial court's denial of defendants' motion for summary disposition and direct that an order granting the same be entered.

[3] We note and reject plaintiff's claim that MCL 600.2966 does not abolish defendants' liability under MCL 600.1402 and MCL 691.1405. See *Boulton v Fenton Twp*, 272 Mich App 456, 460-461; 726 NW2d 733 (2006).

Next, plaintiff argues that the trial court erred in denying his motion to enforce a purported settlement agreement between the parties. We disagree. A trial court's decision whether to enforce a settlement agreement is reviewed for an abuse of discretion. See *Groulx v Carlson*, 176 Mich App 484, 493; 440 NW2d 644 (1989).

A settlement agreement is binding when one of the following occurs: (1) it is made in open court or (2) it is made in writing, subscribed by the attorney for the party against whom the agreement is offered. MCR 2.507(H).[4] "'An agreement to settle a pending lawsuit is a contract and is to be governed by the legal principles applicable to the construction and interpretation of contracts.'" *Mikonczyk v Detroit Newspapers, Inc*, 238 Mich App 347, 349; 605 NW2d 360 (1999), quoting *Walbridge Aldinger Co v Walcon Corp*, 207 Mich App 566, 571; 525 NW2d 489 (1994). A valid contract requires mutual assent or a meeting of the minds on all essential terms. *Eerdmans v Maki*, 226 Mich App 360, 364; 573 NW2d 329 (1997).

Here, while the correspondence between the parties' attorneys regarding settlement may have been sufficient to satisfy the writing requirement under MCR 2.507(H), there was no meeting of the minds on all the material terms of the settlement. To the contrary, the parties could not agree on the extent of the release of defendants' liability.

During the course of the litigation, plaintiff's attorney sent a letter to defendants' attorney referring to a prior conversation regarding settlement. That letter stated that plaintiff was willing to settle the case for $800,000, but that the parties would "need to clarify that no-fault and/or workers comp benefits continue, as well as the language of the release." Defendants' attorney responded to the letter, acknowledging that he was authorized to settle for $800,000, but noting that the settlement "would have to be accompanied by a settlement and release agreement concerning all claims raised or which might be raised, all costs, interest, attorney fees, medical expenses, loss of earnings and earning capacity, against Osceola County and any of its employees, officials, imdemnitors [sic] and insurance carriers."

Thereafter, plaintiff's attorney sent a letter to defendants' attorney requesting that he order a settlement check "in the anticipation that [they would] work out any problems with the language in the Release by the end of next week." A few days later, plaintiff's attorney again wrote to defendants' attorney, advising that he was only authorized to settle plaintiff's third-party case, and clarifying that defendants' attorney was not seeking a release of plaintiff's putative first-party rights. Defendants' attorney then provided plaintiff's attorney with a draft release and settlement agreement for review. Plaintiff's attorney responded, advising that the draft release was acceptable, except for the contribution and indemnity language that defendants' attorney added, which plaintiff's attorney deleted. Defendants' attorney responded to plaintiff's attorney, advising that defendants were unable to meet his conditions of settlement.

The record clearly shows that there was no meeting of the minds between the parties on the material terms of the settlement. Therefore, the parties never reached a valid settlement agreement, and the trial court did not abuse its discretion in refusing to enforce the purported settlement agreement in this case. Plaintiff's reliance on *Mikonczyk*, *supra*, *Siegel v Spinney*, 141

[4] MCR 2.507 was amended on February 23, 2006 (effective May 1, 2006). Former subrule (H) was relettered as (G).

Mich App 346; 367 NW2d 860 (1985), and *Scholnick's Importers-Clothiers, Inc v Lent*, 130 Mich App 104; 343 NW2d 249 (1983), for the proposition that the inability to agree on the final language of the settlement paperwork does not cause the settlement to be unenforceable, is misplaced. The cases are distinguishable because in those cases the essential terms of the parties' settlement agreements were put on the record, and the parties merely failed to subsequently agree on the final written language of the settlement agreement. Here, the parties never reached an agreement on the essential terms of the settlement.

Reversed in part, affirmed in part, and remanded for entry of an order granting defendants' motion for summary disposition. We do not retain jurisdiction.

/s/ Brian K. Zahra
/s/ Mark J. Cavanagh